

REMARKS

Claims 26, 28, 40, and 42-52 are presented in this application. By way of this Amendment, claims 43-51 and 52 have been canceled. No amendments have been made, and no new matter has been added.

Claim Objections

Claims 26 and 42 are rejected under 37 CFR 1.75 as being substantial duplicates of one another. Applicants respectfully traverse the rejection on the grounds that the claims are of different scope and should not be considered “substantial duplicates” for examination purposes. Indeed, “[...] court decisions have confirmed applicant's right to restate (i.e., by plural claiming) the invention in a reasonable number of ways. Indeed, a mere difference in scope between claims has been held to be enough.” (MPEP 706.03k)

Here, the scope of claim 26 includes pharmaceutically acceptable salts of the recited compound while claim 42 recites the compound in its acid form only. Thus, claims 26 and 42 are of different scope, and each claim is proper under 37 CFR 1.75. Applicants, therefore, request that the objection be withdrawn.

Rejection under 35 USC 112, second paragraph

Claim 52 is rejected under 35 USC 112, second paragraph. The claim has been canceled herein, rendering the rejection moot.

Double Patenting

Claims 26, 28, 40, and 42-52 are provisionally rejected on the grounds of nonstatutory obviousness-type double patenting over claims from copending application 11/748,096. Applicants respectfully request that the provisional double patenting rejection be deferred.

Rejections under 35 USC 112, first paragraph

Claims 43-51 are rejected under 35 USC 112, first paragraph. The claims have been canceled herein, rendering the rejections moot.

Conclusion

Applicants assert that the instant Amendment places the application in a condition for allowance, and such allowance is respectfully requested.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge any fees or credit any overpayment, particularly including any fees required under 37 CFR Sect 1.16 or 1.17, and any necessary extension of time fees, to deposit Account No. 07-1392. The Examiner is invited to contact the undersigned at (919) 483-8160, to discuss this case, if desired.

Respectfully submitted,



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